IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1388 OF 2003

The State of Maharashtra
(Through Dy. S.P.
Anti Corruption Bureau,
Solapur) ...Appellant.

V/s

Avinash Shivdas Kale,
Age 40 years Occu: Police
Constable (under suspension)
Resident of Indapur,
District Pune. ...Respondent.

Mr. A.S. Shitole, APP for the appellant.

Mr. Nitin Jamdar & Mr. Vijay Killedar for the respondent.

CORAM: V. M. KANADE, J.
DATE: 27th January, 2005

P.C.:

1. Heard the learned APP for the State and Shri Jamdar the learned Counsel appearing on behalf of the respondent.

2. The State has filed this appeal challenging the Judgment and Order passed by the Special Judge, Pandharpur in Special Case No.2 of 2000. By the said Judgment and Order dated 21/10/2002, the Trial Court was pleased to acquit the accused of the offences punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. Record and proceedings were called. The learned APP

appearing on behalf of the State has taken me through the Judgment and Order of the Trial Court as also the notes of evidence of the witnesses who were examined by the prosecution.

3. The prosecution case in brief is that one Shailesh Phadtare was the owner of jeep and while he was proceeding to Indapur on 30/3/1999, he met with an accident as one truck dashed into jeep, as a result of which he suffered injury on his leg. After some time, Police Jeep arrived and the accused - constable Avinash got down from the jeep and asked Shailesh to wait there. Accordingly, the complainant took the jeep to the Police Station, Indapur and waited there for some time. However, since nobody turned up, he returned to Akluj and gave his jeep in garage for repairs. On 2/4/1999, the accused - Avinash Kale at about 2.30 p.m. came to Deepak garage and demanded an amount of Rs 10,000/-. There were some negotiations and the complainant agreed to pay an amount of Rs 3000/-. It is alleged that the accused demanded Rs 500/-. The complainant, therefore, borrowed Rs 200/- from the owner of the garage and gave Rs 500/- to the accused. The accused told him that he would return on 7/4/1999 at about 10.30 a.m. and the remaining amount should be paid to him. The complainant approached the

Office of the anti-corruption bureau. A complaint was lodged and the pre-trap panchanama was prepared. On 7/4/1999, the Raiding Party went along with the complainant to Deepak Garage where the amount was to be paid. However, the accused did not turn up and, therefore, the trap failed. On the next date i.e. 8/4/1999 the complainant informed the anti-corruption bureau that the accused had left a message that he would collect the money at 3.00 p.m. Therefore, again pre-trap panchanama was prepared. Deputy S.P. Shri Panse called two panchas Narayan Dontul and Narsappa Jila and asked them whether the instructions which he had given on the earlier day while preparing the pre-trap panchanama were fresh in their mind or not. The raiding party accordingly went to the place where the amount was to be paid and the complainant paid the amount which was taken by the accused who counted money and kept it in his pocket. Thereafter, pre-arranged signal was given. The raiding party apprehended the accused. The currency notes were seized and the anthracene powder was seen to have stuck on the finger tips of his right hand and also on the left hand side of the pocket of his shirt. The panchanama was prepared. The sanction was granted by P.W.3 - Gulabrao Dharmu Pol. The charge-sheet was filed. The accused pleaded not guilty to the said

charge.

4. The prosecution examined in all four witnesses. The Trial Court, after appreciating the evidence on record, was pleased to acquit the accused for the offence with which he was charged.

5. The learned APP appearing on behalf of the State has taken me through the evidence on record. In the present case, the prosecution has not examined Deepak Chavan, the owner of the garage. The prosecution has not examined Narayan Dontul who had prepared the panchanama regarding the seizure of the currency notes from the accused. The other panch Narsappa Jila in his evidence has not deposed that the anthracene powder was found on the hands and on the left hand pocket of the shirt of the accused. It was open for the prosecution to have examined the other panch witness. However, the prosecution has chosen not to examine the said witness and, therefore, an adverse inference is liable to be drawn against the prosecution for non-examination of the star witness in the present case. The reason can be found from the fact that P.W.3 in his evidence was asked to read Exhibit-23 which was the panchanama prepared at the time of raid which was conducted by the raiding party.

P.W. 3 candidly stated in his evidence, after going through the panchanama, that it was no where stated in the panchanama that anthracene powder was found on the hands or finger tips of the accused or on his left hand side pocket of the shirt. Prosecution, therefore, has failed to prove that the powdered money was accepted by the accused. In my view, this is a serious lacuna in the prosecution case. Further, initial demand, in my view, also has not been proved by examining Deepak Chavan who is the owner of the garage. The prosecution case is that the demand was made in the presence of Deepak Chavan. The position in law regarding appreciation of evidence of complainant is quite well settled and it has been held by the Supreme Court that the evidence of the complainant is in the nature of accomplice who is interested witness and, therefore, it is essential that his evidence should be corroborated in material particulars by an independent witness. Thus the demand which is allegedly made by the accused also, in my view, has not been proved by the prosecution. Further, it is difficult to imagine as to how such a demand would be made by a constable who, admittedly, did not have any power to investigate the offence or direct that the registration of the offence be made. The prosecution case is that the incident had taken

place and that the accused had asked the complainant to bring his jeep to the Police Station. It has not come on record that there was any casualty in the said incident or that any person was seriously injured. There was, therefore, no question of ordering the complainant to bring his jeep to the Police Station. It is also not clear from the evidence adduced by the prosecution as to why the said amount of Rs 10,000/- which was reduced to Rs 3,000/- was demanded. It is a settled position in law that gratification which is demanded by the accused should be for the purpose of doing or forbearing to do any official act or to show any favour in exercise of official function. Section 20 of the Prevention of Corruption Act is, therefore, attracted only after it is proved that the demand which is made is for the purpose of showing any favour in doing or forbearing to do the official act. The presumption under section 20 is, therefore, raised only when the prosecution first establishes that the demand is made for doing or not doing the official act. In the present case, the accused being a constable could not have been shown any favour to the complainant. The prosecution, therefore, in my view, also has failed to prove that the alleged amount which was demanded was for the purpose of doing the official act or showing some favour in the exercise of the

official function.

6. In my view, the Trial Court was justified in acquitting the accused of the offence with which he was charged. The Trial Court has given cogent reasons and has taken into consideration the judgment of this Court and the Apex Court before giving its findings. In view of this, I do not see any reason to interfere with the well reasoned judgment and order of the Trial Court. Leave is accordingly refused. Appeal is dismissed.

V.M. KANADE, J.